

FIRST APPEAL No 4518 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-
and
Hon'ble MR.JUSTICE H.K.RATHOD sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? No :

NATIONAL SEEDS CORPORATION LIMITED

Versus

NITESH DYEING & PRINTING WORKS

Appearance:

MR VB GHARANIYA for Petitioner
MR RAVINDRA SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 14/02/2000

ORAL JUDGEMENT

1. This Appeal was filed after expiry of limitation,
but the delay was condoned by this Court vide order dated

9.12.1999 after hearing the learned Counsel for the parties. The order was passed in Civil Application No.10345 of 1999.

2. Today the Appeal is listed for admission. Learned Counsel for the appellant has been heard. Learned Counsel for the respondent is also present. We have examined the Judgment of the Court below.

3. It was a Suit filed for recovery of price of goods supplied by the respondent to the appellant. On the pleadings of the parties the trial Court framed eight issues. It recorded the finding that the plaintiff is a registered Partnership firm under the Indian Partnership Act. Further finding of the trial Court is that the plaintiff is entitled not to the entire claim of Rs.1,62,973.45 ps., but to an amount of Rs.89,994.84 ps. with interest at the rate of 6 per cent p.a. instead of interest at the rate of 18 per cent p.a. as claimed by the plaintiff. The trial Court further found that the Suit was within limitation and it had jurisdiction to try the Suit. It also found that the Suit was not bad for want of notice under Section 80 of the Code of Civil Procedure. The alleged payment raised by the defendant was considered to be only part payment and not full payment. With these findings the Suit for recovery of Rs.89,994.84 ps. together with 6 % p.a. interest from 8.10.1983 till realisation was decreed with proportionate cost.

4. We have examined the findings of the trial Court on all these issues. The trial Court has correctly taken the view that the Suit is not bad for want of notice under Sec. 80 of the C.P.C. On the point of limitation the view taken by the Trial Court cannot be said to be suffering from any error of law in view of admitted position that on 8.10.1983 an amount of Rs.30,641.13 ps. was paid by the defendant through cheque as part payment. The aid of section 18 of the Limitation Act was therefore rightly taken. The Suit was filed on 3.5.1986. It was thus a Suit within limitation. Hence, the finding of the trial Court on this issue also prima facie does not appear to be erroneous.

5. The trial Court has rightly reduced the rate of interest from 18 per cent to 6 per cent per annum against which no Appeal has been filed by the respondents.

6. On the point of part payment of Rs.30,641.13 ps. the trial Court found that this payment through cheque was admitted. This finding also does not suffer from any

manifest error of law.

7. On the point of jurisdiction the findings of the trial Court, inter-alia, are that the goods were despatched from Ahmedabad for delivery to its destination. It is also a finding of the trial Court that the goods were tested by the defendant at Ahmedabad and the demand draft was also sent from Ahmedabad. The orders were also received by the plaintiff through post at Ahmedabad and the order was accepted at Ahmedabad. In these circumstances part of cause of action did accrue at Ahmedabad and in view of Section 20(c) of the C.P.C. the Court at Ahmedabad had jurisdiction to entertain and decide the Suit.

8. Learned Counsel for the appellant has argued that the findings of the trial Court on delivery of goods is erroneous. We have examined the judgment of the trial Court and we find that the trial Court has appreciated, oral and documentary, evidence on record and there was no occasion for the trial Court to draw adverse inference on account of any failure or omission on the part of the plaintiff - respondent.

9. We, therefore, do not find any merit in this Appeal which is hereby dismissed under Order : 41, Rule : 11 C.P.C. No order as to costs.

sd/-

(D. C. Srivastava, J.)

Date : February 14, 2000 sd/-

(H. K. Rathod, J.)

sas